

EISENBERG & BAUM

July 14, 2020

**VIA ECF**

The Honorable Edward R. Korman  
United States District Court, Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

**Re: *Van Vorst v. Lutheran Healthcare*  
Case No. 15-cv-1667 (ERK) (PK)**

Dear Judge Korman,

On behalf of Plaintiffs, we write in response to the Court's order concerning the New York City Commission on Human Rights (the "Commission") and its Legal Enforcement Guidance on Discrimination on the Basis of Disability (the "Guidance"), which is available at <https://on.nyc.gov/2zu4LKj>. The earliest version Plaintiffs have located is from June 2018, as cited in their papers. (Pls.' Reply Br. at 10 & 12, ECF No. 117; Pls' Br. at 10–11, ECF No. 108-1.)

Based on Plaintiffs' research, it appears that "the agency began issuing legal enforcement guidance documents for the first time" under the leadership of Commissioner Carmelyn P. Malalis,<sup>1</sup> who was not appointed until November 2014.<sup>2</sup> Before that appointment, the Commission issued its interpretation of the NYCHRL for disability discrimination through the Commission's own decisions and orders. *See, e.g., Louis Harris & Assocs. v. deLeon*, 646 N.E.2d 438, 439 & 442 (N.Y. 1994) (accepting the Commission's interpretation of the NYCHRL in a 1991 decision even though the disability-discrimination complaint was filed in 1984 because "[u]nder such circumstances, the practical construction of the statute by the agency charged with implementing it, if not unreasonable, is entitled to deference by the courts"). Then after that appointment, the Commission began to supplement its decisions and orders with legal enforcement guidance documents, which cite preexisting authority with approval. *See, e.g.,* Guidance at 10 & 77 (citing, for example, New York case law like *Phillips v. City of N.Y.*, 66 A.D.3d 170, 185 (1st Dep't 2009) and the Commission's own decisions and orders).

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<sup>1</sup> Gurjot Kaur & Dana Sussman, *Unlocking the Power and Possibility of Local Enforcement of Human and Civil Rights: Lessons Learned from the NYC Commission on Human Rights*, 51 Colum. Human Rights L. Rev. 584, 623 (2020); *see also id.* at 587 ("This Article relies in part on the authors' personal experiences as members of the leadership team at the New York City Commission on Human Rights.").

<sup>2</sup> Commissioner's Bio, N.Y.C. Comm'n on Human Rights, <https://on.nyc.gov/2OoteZ1>.

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We thank the Court for its time and attention.

Respectfully submitted,



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Andrew Rozynski

**EISENBERG & BAUM, LLP**

24 Union Square East, Fourth Floor

New York, NY 10003

Main: (212) 353-8700

Fax: (212) 353-1708

arozynski@eandblaw.com

*Attorneys for Plaintiff*

cc: All Counsel of Record